

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**MIGUEL GUTIERREZ GONZALEZ,**

*Plaintiff,*

v.

**MARTIN O'MALLEY,**  
*Commissioner of the Social Security  
Administration,<sup>1</sup>*

*Defendant.*

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**EP-23-CV-00248-DCG-MAT**

**ORDER ACCEPTING REPORT AND RECOMMENDATION**

The Commissioner of the Social Security Administration determined that *pro se* Plaintiff Miguel Gutierrez Gonzalez was ineligible to receive Supplemental Security Income (“SSI”) benefits for the period between January 1, 2017 and February 1, 2019.<sup>2</sup> Plaintiff has appealed the Commissioner’s decision.<sup>3</sup>

In accordance with this Court’s “Standing Order Referring Social Security Cases” to U.S. Magistrate Judges,<sup>4</sup> the Court automatically referred Plaintiff’s appeal to U.S. Magistrate Judge

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<sup>1</sup> The Court automatically substituted Commissioner O’Malley in Acting Commissioner Kilolo Kijakazi’s place as the Defendant in this suit. *See* FED. R. CIV. P. 25(d) (“An action does not abate when a public officer who is a party in an official capacity . . . ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party. Later proceedings should be in the substituted party’s name . . .”).

<sup>2</sup> *See, e.g.,* Comm’r’s Mem., ECF No. 15, at 1.

All page citations in this Order refer to the page numbers assigned by the Court’s CM/ECF system, not the document’s internal pagination.

<sup>3</sup> *See generally* Compl., ECF No. 2.

<sup>4</sup> *See* Standing Order Referring Social Security Cases (W.D. Tex. May 3, 2012).

Miguel A. Torres.<sup>5</sup> Judge Torres has now issued a Report and Recommendation (“R. & R.”) advising the Court to vacate the Commissioner’s decision and remand the case for further proceedings.<sup>6</sup> The Court now **ACCEPTS** the R. & R. **IN FULL**.

## I. DISCUSSION

### A. **Neither Party Objected to the R. & R. by the Applicable Deadline, So the Court Will Review the R. & R. Under the Deferential “Clearly Erroneous or Contrary to Law” Standard**

The standard of review that a District Judge applies when deciding whether to accept, reject, or modify a Magistrate Judge’s report and recommendation depends on whether a party has objected to it by the applicable deadline. If a party files a timely objection to a report and recommendation, then “the Court must make a *de novo* determination of those portions of the report or proposed findings or recommendations to which objection is made.”<sup>7</sup> But if “no party objects to [a] Magistrate Judge’s Report and Recommendation” by the applicable deadline, then “the Court is not required to perform a *de novo* review”; instead, the Court “need only review [the report and recommendation] to decide whether [it] is *clearly erroneous or contrary to law*.”<sup>8</sup>

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<sup>5</sup> To be more precise, the Court initially referred this case to then-U.S. Magistrate Judge Leon Schydlower. *See* 6/28/23 Minute Entry. The Court then reassigned the case to Magistrate Judge Torres after Judge Schydlower became a U.S. District Judge. *See* 4/11/24 Minute Entry.

<sup>6</sup> *See generally* R. & R., ECF No. 16.

<sup>7</sup> *E.g., Mission Pharmacal Co. v. Virtus Pharms., LLC*, No. 5:13-cv-00176, 2014 WL 12480014, at \*1 (W.D. Tex. Mar. 28, 2014); *see also* 28 U.S.C. § 636(b)(1).

<sup>8</sup> *Magdalena Garcia v. Sessions*, No. 1:18-CV-59, 2018 WL 6732889, at \*1 (S.D. Tex. Nov. 7, 2018) (emphasis added); *see also, e.g., Tamayo v. Galindo*, No. 5:08-cv-00392, 2008 WL 11333884, at \*1 (W.D. Tex. Aug. 29, 2008) (similar).

## **1. The Commissioner Didn't Object to the R. & R. by the Applicable Deadline**

Ordinarily, a party has “fourteen days after being served with a copy” of a report and recommendation to “serve and file written objections to [the Magistrate Judge’s] proposed findings and recommendations.”<sup>9</sup> Here, the Clerk of Court served the Commissioner with the R. & R. on August 15, 2024, which is when the Clerk posted the R. & R. to the electronic case docket.<sup>10</sup> The Commissioner’s 14-day deadline to object to the R. & R. therefore expired on August 29, 2024.

The Commissioner didn’t object to the R. & R. by the August 29th deadline. The Court will therefore accept the aspects of the R. & R. that are adverse to the Commissioner unless they’re clearly erroneous or contrary to law.<sup>11</sup>

## **2. Plaintiff Didn't Object to the R. & R. by the Applicable Deadline**

Notwithstanding the usual rule that a party has 14 days from service to object to a report and recommendation,<sup>12</sup> a party gets an extra 3 days to object when the Clerk of Court serves that party with the report and recommendation *via* mail.<sup>13</sup> The extended 17-day objection period runs

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<sup>9</sup> 28 U.S.C. § 636(b)(1).

*But see infra* note 13 and accompanying text (noting and applying an exception to that general rule).

<sup>10</sup> *See* FED. R. CIV. P. 5(b)(2)(E) (providing that a paper may be served by “sending it to a registered user by filing it with the court’s electronic-filing system,” in which case service is (with exceptions not relevant here) “complete upon filing”).

<sup>11</sup> *See supra* note 8 and accompanying text.

<sup>12</sup> *See supra* note 9 and accompanying text.

<sup>13</sup> *See* FED. R. CIV. P. 6(d) (“When a party may or must act within a specified time after being served and service is made [by] mail . . . 3 days are added after the period would otherwise expire . . .”).

*See also, e.g., Margetis v. Furgeson*, 666 F. App’x 328, 330 n.3 (5th Cir. 2016) (confirming that Rule 6(d)’s 3-day extension provision applies to the 14-day report and recommendation objection deadline).

from the date that the Clerk *deposits* the report and recommendation in the mail (rather than, say, from the date that the party ultimately *receives* the mailing).<sup>14</sup>

In this case, the Clerk of Court served Plaintiff with the R. & R. by mail because Plaintiff isn't a registered user of the Court's e-filing system.<sup>15</sup> The Clerk's office deposited Plaintiff's copy of the R. & R. in the mail on August 16, 2024,<sup>16</sup> so Plaintiff's 17-day deadline to object to the R. & R. expired on September 3, 2024.<sup>17</sup> Plaintiff didn't file an objection on or before that date—which is unsurprising, as Judge Torres's recommended ruling is favorable to Plaintiff.<sup>18</sup>

Thus, neither the Commissioner nor Plaintiff objected to the R. & R. by the applicable deadline. Therefore, the Court will accept the R. & R. in its entirety unless it's clearly erroneous or contrary to law.<sup>19</sup>

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<sup>14</sup> See FED. R. CIV. P. 5(b)(2)(C) (stating that service *via* mail “is complete upon *mailing*” (emphasis added)); see also, e.g., *Moody v. Wetzel*, No. 20-3258, 2021 WL 3022597, at \*1 n.1 (E.D. Pa. July 16, 2021).

<sup>15</sup> See Certified Mail Receipt, ECF No. 17.

See also FED. R. CIV. P. 5(b)(2)(E) (specifying that a document may be served on a party “by filing it with the court's electronic-filing system” only if that party is “a *registered user*” of that system (emphasis added)).

<sup>16</sup> See Certified Mail Receipt.

<sup>17</sup> 17 days from August 16, 2024 is September 2, 2024. That date was a federal holiday, so Plaintiff's objection deadline expired on September 3<sup>rd</sup>. See FED. R. CIV. P. 6(a)(1)(C) (specifying that where—as here—a deadline would otherwise expire on “a Saturday, Sunday, or legal holiday,” the deadline instead expires at “the end of the next day that is *not* a Saturday, Sunday, or legal holiday” (emphasis added)).

<sup>18</sup> See generally R. & R.

<sup>19</sup> See *supra* note 8 and accompanying text.

**B. The R. & R. Is Neither Clearly Erroneous Nor Contrary to Law**

After carefully reviewing Judge Torres's R. & R., the Court concludes that it's neither clearly erroneous nor contrary to law.<sup>20</sup>

**II. CONCLUSION**

The Court therefore **ACCEPTS** Judge Torres's "Report and Recommendation" (ECF No. 16) **IN FULL**.

The Court thereby **VACATES** the Commissioner's decision finding Plaintiff ineligible for SSI benefits for the period between January 1, 2017 and February 1, 2019.

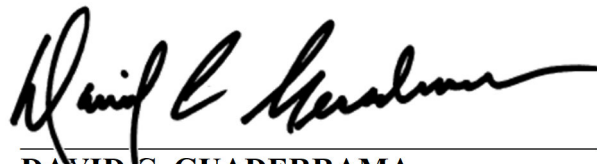
The Court **REMANDS** the case to the Social Security Administration for further proceedings consistent with this Order and Judge Torres's R. & R.<sup>21</sup>

The Court will separately issue a final judgment effectuating this Order.<sup>22</sup>

Finally, the Clerk of Court **SHALL MAIL** this Order to the following address:

Miguel Gutierrez Gonzalez  
5004 Quitman Avenue  
El Paso, TX 79903

**So ORDERED and SIGNED this 10th day of September 2024.**



**DAVID C. GUADERRAMA**  
**SENIOR U.S. DISTRICT JUDGE**

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<sup>20</sup> *See generally* R. & R.

<sup>21</sup> *See* 42 U.S.C. § 405(g).

<sup>22</sup> *See* FED. R. CIV. P. 58(a) (providing (with exceptions not relevant here) that "[e]very judgment . . . must be set out in a . . . document" that is "separate" from the order granting relief).